IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

The State of Rajasthan & Ors.
Vs.
The Rajasthan Civil Services Appellate Tribunal & Ors.

S.B. CIVIL WRIT PETITION NO.3730/2002 UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 16th October, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Rameshwar Dave, Dy. Govt. Advocate for petitioners.
Mr.K.R. Choudhary, Advocate for the respondents.

BY THE COURT

The State of Rajasthan in the present writ petition has challenged the order dated 25th February, 2002 passed by the

Rajasthan Civil Services Appellate Tribunal (for short 'the Tribunal'). The Tribunal by the aforesaid order allowed the appeal filed by the respondent No.3 who retired from service on 31st May, 2000. He was serving with the petitioner No.3 on the post of vehicle driver in the office of Dy. Director, Government Agricultural Research Center, Mohangarh, District Jaisalmer.

The respondent No.3 has filed an appeal before the Tribunal with the prayer that the Government be directed to release all his retiral benefits and the order dated 20th November, 2000 passed by the petitioner No.2 be quashed and set aside. According to the petitioners, the order dated 20th November, 2000 issued by them merely sought to rectify mistake. In this order, it was stated that when the respondent-workman joined the post for promotion on 01st September, 1981 as Driver, he was given a jump from the pay of Rs.565/- (in pay scale of Rs.490-840) to the pay of Rs.610. It was contrary to the Rules because the respondent No.3 was not receiving the existing pay scale as 01st September, 1981. They

have contended that the advance increment was granted to the persons who had completed 10 years service as on 01st September, 1986, and an order to that effect was issued on 21st October, 1987.

It was a case where the respondent No.3 had taken voluntary retirement and the order permitting him to retire voluntarily stated that no departmental inquiry was pending against him. The respondents have sought to rectify the so called mistake committed by them on 16th November, 1985, fifteen years thereafter on 20th November, 2000 even though the respondent N0.3 had been allowed to retire on 31st May, 2000. The learned Tribunal while allowing the appeal set aside the order dated 20th November, 2000 and directed the petitioners to finalize the pension of the respondent within a period of three months.

I have heard Mr. Rameshwar Dave, learned Dy. Government Advocate and Mr. K.R. Choudhary, learned counsel for the respondents and perused the record.

The case of the respondent No.3 is that he could not be allowed to jump from Rs.565/- to Rs.610/- in the pay scale of Rs.490-840. Such an objection was raised much after the petitioner was allowed to retire voluntarily. The so called rectification of mistake was not made by the petitioner for more than 15 years when the respondent No.3 was serving with them. Now in this writ petition, the sole ground on which they have sought to rectify the so called mistake is that the respondent No.3 at the time of his voluntary retirement had given a declaration to the effect that he agreed to refund the over dues, if any, made to him on account of incorrect fixation of his pay in the revised pay scale. Such a declaration according to the respondents have been given under Rule 9 and 10 (2). Although the petitioner has placed reliance on the judgment of this Court in Nand Lal & Ors. vs. Rajasthan State Electricity Board & Ors., reported in 1999 (2) RLR 707, but they have not given any convincing reason which can justify the change of the pay scale made in the year 1985 now after more than 15 years. So far as the judgment of this Court is concerned, in that judgment only a principal of law has been

laid down that if some over payment has been made to an employee on account of mistake which was not attributable to him and such over payment has not been received by him on account of any misrepresentation or fraud, although the authorities may rectify the mistake but the recovery of the excess amount so paid cannot be made. But grounds of the writ petition in assailing the judgment passed by the learned Tribunal do not make out as to what was the mistake which the respondent sought to rectify. Such an assertion on the part of the petitioner cannot be accepted on their mere ipse dixit. They have to substantiate as to how and in what manner the pay scale granted to the respondent No.3 way back on 26th November, 1985 was wrongly given. The order dated 20th November, 2000 also does not disclose any such reason which may bring home their argument with regard to alleged mistake.

In the result, I do not find any merit in the writ petition and the same is dismissed. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-